

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a submission by Hamilton City Council in respect of
the PROPOSED WAIKATO DISTRICT PLAN pursuant to
Clause 6 of Schedule 1 to the Act

**STATEMENT OF EVIDENCE OF LAURA JANE GALT ON BEHALF OF
HAMILTON CITY COUNCIL**

10 March 2021

Hearing 25: Zone Extents – Rest of District

INTRODUCTION

1. My full name is Laura Jane Galt. I am an Intermediate Planner at Hamilton City Council (**HCC**). I have been a planner at HCC for approximately 13 years.
2. I have over 14 years' policy planning experience in local government under the Resource Management Act 1991 (**RMA**).
3. My qualifications include a Master of Environmental Planning from the University of Waikato (2011) and a Bachelor of Social Science with Honours from the University of Waikato (Resource and Environmental Planning, 2006). I am an intermediate member of the New Zealand Planning Institute.
4. HCC made submissions and further submissions on Zone Extents – Rest of District which is the subject of Hearing 25.

RELEVANT EXPERIENCE

5. My experience spans a variety of planning practice including:
 - a) making submissions on proposed district plans and resource consent applications;
 - b) Environment Court mediation on cross-boundary resource consents;
 - c) authoring s42A reports for district plan review and plan change processes; and
 - d) participating in various district plan review and plan change hearings.

CODE OF CONDUCT

6. I have read the Environment Court Code of Conduct for expert witnesses and agree to comply with it. I confirm that the opinions expressed in this statement are within my area of expertise except where I state that I have relied on the evidence of other persons. I have not omitted to consider materials or facts known to me that might alter or detract from the opinions I have expressed.

SCOPE OF EVIDENCE

7. The purpose of this evidence is to address:
 - a) the submission points made by HCC that are relevant to Hearing 25 – Zone Extents – Rest of District; and
 - b) the response to the s42A Zone Extents Framework (**s42A Framework**) report for Hearing 25 and submitters' evidence from proponents of the rezoning requests.

SUMMARY OF EVIDENCE

8. HCC made submissions and further submissions on Planning Maps: Zone Extents - Rest of District, which is the subject of Hearing 25.
9. In Hearings 1 and 2, HCC provided a broad overview of the relief it seeks through the district plan review process and the strategic land use context within which the Waikato Proposed District Plan (**WDPDP**) exists¹. Hearing 3 focused on the strategic framework of the WDPDP, from where all subordinate planning directions cascade. HCC's submissions and evidence provided a strategic overview for HCC's submissions relating to the

¹ Opening legal submissions on behalf of HCC for Hearing 1 dated 26 September 2019.

Strategic Objectives of the WDPDP and the strategic policy basis for the specific relief sought. I refer to some of those matters in my evidence for Hearing 25 as they provide important context for the relief sought by HCC in Zone Extents.

10. On 25 September 2020 (prior to Hearing 18 – Rural Zone), HCC tabled a memorandum seeking to revise the relief sought for the Area of Interest (**AOI**) in Hearing 3 – Strategic Framework (memorandum attached Appendix A).
11. HCC made submissions on specific Planning Maps that were within the AOI and numerous further submissions on rezoning requests. My evidence focuses on the areas where submitters have provided evidence and HCC's position has moved on or – in the case of rezoning in the Urban Expansion Area (**UEA**) – reiterating the importance of protecting the UEA for future urban use.
12. In response to the s42A Framework report, HCC supports the recommendations in the Framework report insofar as it does not recommend a change of zoning for sites outside the identified growth nodes or those not contiguous with existing residential areas.
13. Paragraph 75 of the s42A Framework report is especially relevant. It reaches the position that urban development in rural environments should occur only around existing towns which are identified in the WRPS and within boundaries set by the Future Proof Strategy Planning for Growth 2017.
14. Paragraph 77 of the s42A Framework report is also relevant. It refers to the protection of land in the UEA for future urban development (WDPDP Policy 5.5.1) and limiting the establishment of commercial and industrial activities within the Country Living Zone (**CLZ**) (WDPDP Policy 5.6.8).

Specific Rezoning Requests

15. Tainui Group Holdings (**TGH**) seeks the rezoning of its land east of the Waikato Expressway (**WEX**) from Rural Zone to Industrial Zone. HCC is unable to support full industrial rezoning of this land at this stage as the necessary work in relation to Future Proof and the Metro Spatial Plan (**MSP**) in this area is ongoing. In the alternative however, HCC considers that it could support the land becoming:
 - a) a Deferred Industrial Zone (provided appropriate infrastructure and staging triggers are put in place); or
 - b) a Future Urban Zone (**FUZ**), provided the identified urban land uses are limited to industrial activities.
16. HCC supports the s42 Framework author's recommendation that no further extension of CLZ is appropriate in the Waikato District.
17. HCC still opposes any rezoning or altering of subdivision rules in the UEA.

DOCUMENTS AND MATERIAL CONSIDERED

18. In preparing my evidence, I have considered the following information:
 - a) The RMA;
 - b) National Policy Statement on Urban Development Capacity 2016 (**NPS-UDC**);
 - c) National Policy Statement on Urban Development 2020 (**NPS-UD**);
 - d) Operative Waikato Regional Policy Statement (**WRPS**);
 - e) The Waikato District Operative District Plan 2011 (**WDODP**);

- f) The WDPDP and Section 32 analysis;
- g) Section 42A reports for Hearings 3, 5, 10, 12 and 18;
- h) Future Proof Growth Strategy 2009 and the 2017 review;
- i) Statement of evidence of Luke O'Dwyer dated 15 October 2019;
- j) Statement of evidence of Alice Morris dated 15 October 2019;
- k) Statement of evidence of Loren Brown dated 25 November 2019;
- l) Waikato 2070 Growth Strategy; and
- m) Memorandum of Counsel for Hamilton City Council dated 25 September 2020.

HCC SUBMISSIONS – RELEVANT TO HEARING 25

- 19. The process for the Zone Extents hearing rightly differs from previous hearings. My evidence responds to the s42A Zone Extents Framework Report dated 19 January 2021 and the evidence provided by the proponents seeking rezoning. These submissions are set out in Table 1 and 2 (see paragraph 34 below).
- 20. HCC made submissions on matters I consider to be relevant to this hearing and to future hearings, which are not addressed in the s42A report. As per verbal instructions to submitters at a hearing on 6 November 2019, the Hearings Panel advised it was useful to raise these, recognising that they may need to be addressed again during the Other Matters hearing. The additional submissions I consider to be relevant are

submission points: 535.9, 535.13, 535.14, 535.53 and 535.54 (which were allocated to Hearing 3 on Strategic Objectives).

21. I will now address each of these, not necessarily with any expectation they will be determined in the Hearing 25 process. Rather, they are raised to provide the wider context for HCC's interest in the zone extents and how the zone extent provisions intersect with other parts of the WDPDP.
22. The suite of submissions HCC made on the Zone Extents and the Strategic Objectives of the WDPDP, when considered in their entirety, paint a clearer picture of the full extent of the issues relevant to HCC than the individual points.

Submissions on the Strategic Objectives

23. In HCC's submission on the WDPDP, an 'Area of Interest' (**AOI**) was referred to as the broad geographic area, near to the boundary with HCC, where there is a high potential for land use and subdivision to affect wider strategic planning, including planning for infrastructure needs and ongoing maintenance undertaken by HCC. The AOI is marked on the map included as Attachment 2 to the Statement of Evidence of Mr Luke O'Dwyer dated 15 October 2019, presented in Hearing 3. I rely on the opening legal submissions to the Hearings Panel presented on behalf of HCC on 30 September 2019 by Mr Lachlan Muldowney, along with the evidence of Mr O'Dwyer for Hearing 3, for the detailed explanation of how the extent of the AOI was determined.
24. HCC's submission point 535.9 sought the overarching relief for the management of land uses around its boundaries within HCC's AOI. The key outcome sought in HCC's submission was to protect rural land through avoiding rural land fragmentation and by ensuring growth is directed to identified growth cells. HCC does not propose that development be

prohibited in the Rural Zones or Country Living Zone (**CLZ**). Rather, as a means of achieving the outcome sought in its submission, HCC provided a suite of objectives and policies in the evidence of Ms Alice Morris dated 15 October 2019 in Hearing 3 to ensure that growth and development within HCC's AOI appropriately manages non-rural land uses and provides for efficiently-integrated infrastructure.

25. Subsequently, HCC tabled a Memorandum of Counsel dated 25 September 2020, which clarified HCC's position, including that non-rural land uses in the AOI be 'discouraged' rather than 'avoided' as previously sought. HCC maintained its position that non-rural land uses must be avoided in the UEA.
26. Hearing 3 also addressed HCC submission points 535.13 and 535.14, Policies 4.1.3 a) and b) – Location of Development. HCC sought the following amendment to Policy 4.1.3(a) (shown in underline):

Subdivision and development of a residential, commercial and industrial nature is to occur within towns and villages where infrastructure and services can be efficiently and economically provided in a coordinated manner with other developments; and

27. The rationale being that infrastructure is critical to enable growth and must be carefully and sustainably managed from a cross-boundary perspective. As provided in the evidence of Ms Morris for Hearing 3:²

When that infrastructure is sourced from outside the district, the sustainability of both the land resource of the district and where the infrastructure is sourced from must be addressed. If there is no coordination on infrastructure matters, the sustainability of Hamilton's land resource could be impacted.

28. Fundamentally, HCC supports the growth pattern set out in Future Proof and the WRPS. Allowing development outside of defined growth areas results in ad hoc development which creates unanticipated demand for

² Statement of Evidence of Alice Morris for Hearing 3 dated 15 October 2019, paragraph 39.

urban services (transport and three waters). Substantial growth outside the defined growth areas is unsustainable and compromises the Future Proof and WRPS settlement patterns. HCC's submission seeks to avoid that outcome.

29. Furthermore, the recently finalised MSP also does not contemplate residential rezoning just outside the Hamilton boundary unless it is part of an identified growth area.

UEA

30. The Strategic Agreement³ (appended to my evidence dated 17 March 2020 for Hearing 12: Country Living Zone) between HCC and Waikato District Council (**WDC**) identified areas of land to be transferred to HCC in the future, subject to agreed triggers. Three areas yet to be incorporated into HCC's jurisdiction are identified as WA, R2 and HT1 in the maps appended to the Strategic Agreement. The principles established by the Strategic Agreement enable land within the Waikato District to be managed to retain the rural / productive nature of the land until such time as it is required for urbanisation. The principles of the Strategic Agreement were then translated into the WDODP as the Urban Expansion Policy Area⁴ (**UEPA**) (see Rule 25.5(f)).
31. The constraints imposed under the UEPA provisions in the WDODP have ensured the protection of high-class soils and the protection of the land resource by avoiding ad hoc development and subdivision. These provisions ensure future urbanisation is not compromised and allow for a more practical conversion in due course.

³ The 2005 Strategic Agreement was reviewed in 2020 and signed in November 2020. The agreement is now trigger based, rather than date dependant for the transfer of land within the UEA.

⁴ Statement of Evidence of Luke O'Dwyer for Hearing 3 dated 15 October 2019 paragraphs 36 – 40.

32. The corresponding provisions in the WDPDP adopt the term 'UEA'. The majority of the land within the 3 remaining areas is zoned Rural with the exception of an area of CLZ on the western boundary of area HT1 (approx. 71ha). Accordingly, HCC's submission points 535.53 and 535.54 sought the inclusion of mechanisms which ensure that future urban development potential of the land in the UEA was not compromised.
33. The wider strategic picture and background outlined above is useful to understand HCC's position on the zone extents. It also helps in understanding HCC's interest in retaining the provisions as notified and not providing for further development that will place pressure on existing and planned development. It also sets out the background to the Strategic Agreement and how this relates to the UEA. Against that backdrop, I will now outline my evidence relating directly to Hearing 25 matters.

HCC SUBMISSIONS – HEARING 25

34. The s42A Framework report addresses the identified HCC submission points in the following way:

Table 1: s42A Framework response to HCC submissions

	HCC submission	Framework s42A response	HCC Response to s42A report recommendation
Sub 535.33	<p>Amend the Proposed Plan to reflect and relate to sub-regional growth data including the National Policy Statement on Urban Development Capacity (NPS-UDC).</p> <p>Work by Future Proof on the Housing and Business Development Capacity Assessment (HBA), as required by the NPS-UDC, is being undertaken presently. HCC believes that there is an</p>	<p>The Framework S42A recognises and sets out the considerations to address the MSP and the new NPS-UD requirements.</p>	<p>HCC supports WDC's approach to addressing the NPS-UD; however, I note there is ongoing work occurring in this space.</p> <p>Whilst the MSP is yet to be incorporated into statutory documents. I consider the approach is in line with Future Proof and the WRPS. Of specific note is that the MSP does not contemplate residential rezoning just outside the City Boundary</p>

	<p>opportunity to amend the Proposed Plan to include the recent work on growth projections that has resulted from the HBA and the growth management of the District is articulated in the Proposed Plan.</p>		<p>unless it is part of an identified growth area.</p> <p>HCC notes that several submitters have requested an urban rezoning on the Hamilton boundary, but have not provided evidence. In these instances, HCC wishes to reiterate that we support the Framework report approach which does not recommend rezoning sites that are outside identified growth nodes or those that are not contiguous with existing residential areas.</p>
<p>Sub 535.86 Country Living Zoning</p>	<p>Retain the Country Living zoning as proposed. HCC supports the amount of land zoned Country Living remaining static.</p>	<p>CLZ should remain static and not increase from the notified version, unless compelling reasons for rezoning are provided.</p>	<p>HCC supports the s42A author's recommendation to keep the extent of CLZ static.</p>

Table 2: HCC's response to submitters requesting rezoning⁵

Further Submissions	HCC's further submission	Submitters' evidence	HCC's current position
<p>Rezone to CLZ from Rural Zone (185.1 G & M Burnett, 272.1 M Smith, 397.1 Horotiu Properties Ltd, 393.1 Bowrock Properties, 330.141 Gore (See Appendix B</p>	<p>HCC opposes any further expansion of the CLZ within Hamilton's Area of Interest. Given the significant cross-boundary impacts that further subdivision within the area are likely to have on the infrastructure within Hamilton, HCC opposes more lenient subdivision provisions as provided by the CLZ (compared to the Rural Zone).</p>	<p>Seek rezoning of land from Rural to CLZ in areas identified by the submitters.</p>	<p>HCC maintains its opposition to the establishment of any additional CLZ within the AOI, particularly in the UEA.</p>

⁵ Table 2 above does not include submitters that have not provided evidence to support their rezoning requests and HCC's position remains the same as our further submission

for location map)			
341.1 - Tainui Group Holdings	<p>The submitter requests the rezoning of a large tract of rural-zoned land to industrial, to complement the proposed industrial/freight hub within Hamilton and to off-set a possible loss of industrial land within their Hamilton landholdings.</p> <p>Before HCC would be in a position to support this opportunity, further detail would be required, particularly on the infrastructure impacts of such a change, including the transport network, but also importantly the three waters and any associated changes to activities/zones required within Hamilton. At this stage, it is understood that the issue of creating additional industrial land on the other side of the Waikato Expressway is to be explored through the Hamilton to Auckland Corridor project and the MSP.</p> <p>The Waikato PDP zoning quite rightly reflects the current rural use. In the absence of other supporting work that determines new locations for growth of Hamilton and the wider Metropolitan Area, HCC opposes the submission, while awaiting further detail through other planning processes such as:</p> <ul style="list-style-type: none"> - the MSP; - possible Strategic Agreements between Hamilton and Waikato District; - infrastructure impacts; - the wider sub-regional industrial land implications of the introduction of more industrial land in the area, given the uncertainty of the future zoning within Hamilton. <p>HCC's preference is that any planning for urbanisation in this area, or in any of the areas around Hamilton, is collectively undertaken by HCC, WDC and Waikato Tainui, along with other Future Proof partners.</p>	Continue to pursue an industrial zoning with provisions to be determined through other processes.	<p>The matters raised in HCC's further submission are still outstanding; however, collective planning for this area is being progressed through Future Proof and the MSP.</p> <p>Given the ongoing work in this space in terms of infrastructure, funding and financing yet to be finalised in the Future Proof Housing and Business Assessments, HCC conditionally supports a deferred industrial zone at this time, provided appropriate infrastructure and staging triggers are established. In the alternative, it supports the area becoming a FUZ, provided the identified land uses are limited to industrial activities.</p>
422.1 Malcolm MacDonald	HCC opposes the rezoning of land in the Greenhill/ Puketaha area from Rural Zone to Business Zone with an overlay to allow	The submitter continues to seek the rezoning of this	HCC maintains its opposition to the rezoning of this land.

	<p>the establishment of a Motorway Service Centre. One of the key purposes of the Rural Zone is to protect the productive nature of the land and to ensure growth is more appropriately directed to towns and other areas identified for growth. The development of non-rural activities in an unplanned manner in the Rural Zone can undermine the intent of the zone and compromise future urban development from occurring in a comprehensive manner.</p> <p>There may be opportunities in this location in the future. However, at this stage it is premature to consider such zoning change requests, given the work currently underway within the Hamilton to Auckland Corridor Project, more specifically the MSP. This work involves Waikato District Council, other sub-regional partners and a variety of Crown Agencies. It will put in place a spatial plan and key considerations for the future form and function of the area, and other mechanisms to best support the growth of the wider Hamilton Metropolitan Area. Ad hoc development and zoning changes at this stage could undermine the achievement of wider sub-regional planning aspirations.</p>	land to Business zone.	Work is still ongoing through Future Proof and the implementation of the MSP. It is still premature to consider such zoning change requests.
Matangi Rural-Residential rezoning (398 – I Thomas, 672.1 – I & D Voyle, 371 – Matangi Community Group)	HCC opposed the rezoning of land at Matangi from Rural to Residential, CLZ or Village Zone.	Submitters seeking rezoning to CLZ, Village or Residential zone from Rural.	In general, HCC maintains its opposition to rural zoned land being rezoned to CLZ or Village zone. However, it is noted that the listed submitters are within the Future Proof and WRPS urban limits for Matangi.

35. Table 2 above lists only those submissions that HCC lodged further submissions on for which evidence has been lodged. Where HCC's position in relation to the above submissions has not changed, I do not address them further in this evidence.

36. My response below relates specifically to the submissions that requested rezoning from Rural to CLZ and the TGH submission.

Submission point 535.86 – Country Living Zone extent and further submissions (185.1 G & M Burnett, 272.1 M Smith 397.1, Horotiu Properties Ltd, 393.1 Bowrock Properties, 330.141 Gore)

37. HCC supported the notified extent of CLZ remaining static. The s42A Framework report⁶ addresses WDC's original approach of keeping the amount of CLZ static. The Framework author then identifies two issues and recommends that no further zoning of large-lot residential zones is provided for in the Waikato District.
38. The two issues identified by the Framework author are:
- a) expectation versus reality, and
 - b) fragmentation precluding future urban expansion.
39. In locations where there is a large contiguous area of CLZ (e.g. Tamahere), the issue of expectation versus reality relates to the level of service that can be provided and the ability to fund those services.
40. From HCC's perspective, it also has concerns with cross-boundary impacts on infrastructure within Hamilton, particularly transport, 3 waters and social infrastructure.
41. The second issue (raised by the Framework author) occurs when CLZ is located adjacent to existing urban areas, resulting in both the lot sizes and built form creating fragmentation of the land resource. This in turn precludes future urban expansion. This is a key issue, which I addressed in my evidence for the Hearing 18⁷ - Rural Zone in relation to rural subdivision

⁶ At paragraphs 249 – 250, Hearing 25 Zone Extents Framework report.

⁷ Statement of Evidence of Laura Galt for Hearing 18 – Rural Zone dated 8 September 2020, paragraph 53 - 69

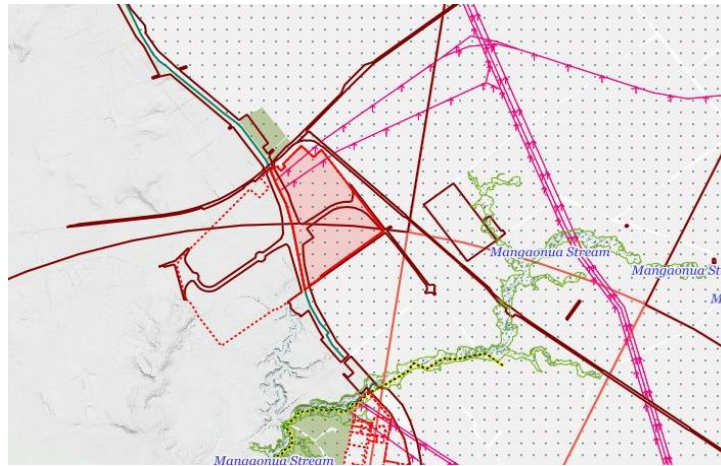
provisions within the UEA. The same arguments for protecting the land resource apply equally to a request to rezone land from Rural to CLZ in the UEA (as requested in Mr Gore's evidence).

42. HCC's interest in protecting the land resource is about giving HCC the best chance to urbanise the land in the most effective and efficient manner after it is transferred.
43. HCC considers that a comprehensive planning analysis of land in the UEA needs to be undertaken, including the location of significant sub-regional infrastructure. Understanding the area as a whole and achieving the integrated planning of the infrastructure requires it to happen in a coordinated manner and to be informed by the wider strategic planning work currently being undertaken through the Hamilton to Auckland (H2A) Corridor Plan and the MSP.
44. Until such planning analysis has been undertaken, taking a precautionary approach through retaining the Rural Zone ensures the irreversible effects of land fragmentation, which will be detrimental to longer-term urban development, are avoided.
45. In conclusion, HCC supports the Framework author's recommendation that no further CLZ is provided for in the Waikato District, particularly so in the UEA.

Tainui Group Holdings

46. TGH sought the rezoning of their land east of the WEX from Rural to a new Ruakura Industrial Zone. The proposed zoning would complement the

Industrial and Logistics zoning within Hamilton and possibly offset the loss of industrial zoned land in Hamilton.



Location of rezoning request.

47. At the time HCC made its further submissions, HCC was unable to fully support this rezoning until further information and details were provided.
48. TGH acknowledge in their memorandum that the strategic planning is currently being progressed in conjunction with the Future Proof Partners and they are not able to provide the full analysis for the rezoning at this stage. However, TGH still seek that the land is rezoned Industrial through the WPDP. The Memorandum of Counsel for TGH records⁸:

TGH is currently focusing its efforts on the regional strategic planning process outlined below and accordingly does not propose at this stage to provide a detailed section 32AA RMA report or evidence. It considers that a more comprehensive analysis could be provided on completion of the strategic planning exercise.

The Hamilton-Waikato Metro Spatial Plan (“**MSP**”) was adopted by the Future Proof Implementation Committee on 10 September 2020. The MSP is a non-statutory spatial plan which sets out the spatial growth pattern for urban development within the Hamilton and Waikato districts.

In relation to the Ruakura East area, which includes the Ruakura Land, the MSP identifies as a matter for future investigation the possibility of providing for industrial and inland port-related activities on the eastern side of the Waikato Expressway. To that end, investigation of alternative land use arrangements for the long-term development of Ruakura, including to the east of the Waikato Expressway, has been

⁸ At paragraphs 11 – 15, Memorandum of Counsel for Tainui Group Holdings Ltd

identified within the “*priority development area*” programme for the Central Corridor.

The intention is that these investigations take place through Phase 2 of the Future Proof Strategy review which is currently underway. TGH’s preference is that the Future Proof Phase 2 process be completed prior to any substantive investment in related rezoning and regulatory processes.

While the PDP process is progressing ahead of the Future Proof Stage 2 work programme, TGH considers it appropriate to retain in the interim the opportunity for an industrial / logistics zoning east of the WEX and accordingly maintains its submission. Depending on the outcome of the Future Proof Stage 2 work, work will be commenced in accordance with the RMA to progress and support an agreed outcome for the land east of WEX.

49. As noted by TGH, work is still ongoing for Phase 2 of Future Proof / Implementation of MSP. From HCC’s viewpoint, outstanding matters in relation to Ruakura are:
 - a) progressing the plan change to rezone the Tramway Block;
 - b) understanding the loss of existing industrial allocation from the swap to residential within Hamilton;
 - c) the outcome of the respective HCC and WRC Housing and Business Assessments; and
 - d) Future Priority Development Area assessments.

Furthermore, HCC does not consider it likely that the Future Proof work would be completed in time for any outcomes to be implemented through the WDPDP process.

50. HCC considers it pragmatic of TGH to progress the strategic planning through Future Proof Stage 2 before any investment is put into rezoning. However, given that the Future Proof Stage 2 is progressing behind that of the WDPDP, HCC is unable to support the TGH request for full industrial rezoning at this stage. In the interim, HCC would support a deferred

industrial notation with appropriate infrastructure and capacity staging triggers.

51. A thematic s42A report has been provided to discuss the merit of introducing two new zones a FUZ and a Medium Density Residential Zone (**MDRZ**) to address the recent NPS-UD requirements for development capacity. When the WDPDP was notified, the provision for growth as required by the NPS-UD was not anticipated. Consequently, the WPDP only provided a live urban zone or a Rural Zone with no transitional zone available.

52. The FUZ & MDRZ s42A report identifies the purpose of a FUZ⁹:

The purpose of a FUZ is to provide for the rezoning of rural land for urban purposes where the location in principle has merit for urban expansion, but where constraints exist that would prevent it from being developed in the short to medium term.

53. HCC supports the introduction of a FUZ to enable the WDPDP to manage growth required by the NPS-UD. I also address the proposed FUZ regarding the extent of Village Zoning at Te Kowhai.
54. At this stage, in the absence of TGH providing evidence to support the rezoning, HCC would support rezoning the area as FUZ until the outstanding matters (including those identified in paragraph 48) have been resolved. That support is conditional upon restricting the urban land uses in the area to industrial activities as requested in the original TGH submission.

⁹ At paragraph 30 – s42A Report - Hearing 25: Zone Extents – FUZ and MDRZ

CONCLUSION

- 55. HCC supports the Framework s42A author's approach that urban rezoning requests outside of the identified growth nodes should not be considered favourably.
- 56. HCC supports the Framework s42A author's recommendation that the CLZ extent remains static in the Waikato District, particularly so in the UEA.
- 57. At this stage, HCC is unable to support TGH's request for full Industrial rezoning of the TGH land east of the Waikato Expressway; however, HCC could potentially support the land becoming:
 - a) A deferred industrial zone, provided appropriate infrastructure and staging triggers are established; or
 - b) A FUZ, so long as it is limited to industrial land uses.

Laura Jane Galt

10 March 2021

Appendix A – Memoradum of Counsel for HCC

BEFORE THE HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a submission by Hamilton City Council in respect of
the PROPOSED WAIKATO DISTRICT PLAN pursuant to
Clause 6 of Schedule 1 to the Act

MEMORANDUM OF COUNSEL FOR HAMILTON CITY COUNCIL

Dated 25 September 2020

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INTRODUCTION

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**). It seeks to further clarify the specific relief sought by HCC in the Proposed Waikato District Plan (**WPDP**) review process, particularly in relation to the area of land identified in its submission as the “Hamilton Area of Interest” (**AOI**). It is intended that this memorandum be considered in the context of the Hearing 18: Rural Zone.

POLICY INTENT OF HCC SUBMISSION

2. HCC made a submission on the WPDP on 9 October 2018. As submitted in Hearing 1, HCC’s engagement with the WPDP process is focused on its interest in the broad strategic land use provisions that affect the sub-region. In particular, it is interested in development occurring immediately adjacent to the HCC urban boundary¹. In that regard, HCC’s submission focuses on two critical areas of land, the AOI and Hamilton’s Urban Expansion Area (**UEA**).

AOI

3. In Hearings 1 and 3, HCC addressed the Hearings Panel on both the AOI and the UEA². In relation to the AOI, it clarified that it is “the broad geographic area outside of the Hamilton City boundary that HCC considers there is a high potential for land use and subdivision to affect wider strategic planning undertaken by HCC”³. The AOI was informed by the National Policy Statement – Urban Development Capacity 2016 and the urban area defined by Statistics New Zealand which included land beyond HCC’s

¹ Opening legal submissions on behalf of HCC dated 26 September 2019 (Hearing 1), paras 6-7.

² Opening legal submissions on behalf of HCC dated 26 September 2019 (Hearing 1). Opening legal submissions on behalf of HCC dated 4 November 2019 (Hearing 3). Statement of Evidence of Luke O’Dwyer dated 15 October 2019.

³ Statement of Evidence of Luke O’Dwyer dated 15 October 2019, p 5.

territorial boundaries⁴. HCC sought “amendments to the WPDP to enable HCC to have an enhanced level of control and input into strategic land use planning and resource consenting of land uses”⁵ within the AOI.

4. HCC further clarified that its interest in the AOI is to ensure that planning, land use, subdivision and infrastructure decisions are aligned and coordinated between the neighbouring councils in order to achieve a more sustainable urban form. HCC sought to avoid a scenario where a lack of forward planning created legacy issues for both Waikato District Council (**WDC**) and HCC⁶.
5. To that end, the broad relief HCC sought included “objectives and policies which control the nature, extent and rate of development, including in both rural and non-rural zones, so that a consolidated urban form within the existing HCC boundary is prioritised and achieved, and that urban sprawl is avoided, and that the inefficient use of land and infrastructure is avoided. HCC seeks rules and methods to achieve these outcomes”⁷.

UEA

6. The other area that HCC’s submission addresses is the Urban Expansion Policy Area (**UEPA**) which is an existing feature of the Operative Waikato District Plan (**ODP**), referred to as the UEA in the WPDP. As submitted in Hearing 3, the UEA consists of three areas of land⁸ sitting within the AOI which are to be transferred to HCC through a boundary adjustment in accordance with the Strategic Agreement 2005 (**Strategic Agreement**) between WDC and HCC⁹.

⁴ Opening legal submissions on behalf of HCC dated 4 November 2019 (Hearing 3), paras 13-14. Statement of Evidence of Luke O’Dwyer dated 15 October 2019, p 5.

⁵ HCC submission, paragraph 1.2.

⁶ Statement of Evidence of Luke O’Dwyer dated 15 October 2019, paras 45-47.

⁷ HCC submission on the PDP dated 9 October 2018, paragraph 1.7.

⁸ HT1, WA, and R2.

⁹ Opening legal submissions on behalf of HCC dated 4 November 2019 (Hearing 3), p 9-10. Statement of Evidence of Luke O’Dwyer dated 15 October 2019, p 10.

7. The UEPA is concerned with preserving those land resources for urbanisation prior to their transfer to HCC. To achieve that, the UEPA carries a suite of planning controls designed to limit non-rural land uses. Rule 25.5(f) of the ODP lists various land use activities that are prohibited in the UEPA. The WPDP proposes to significantly weaken the protection afforded under the ODP by changing the status of activities listed in Rule 25.5(f) to non-complying in the UEA. HCC's submission reflects its concern that this will lead to land uses which have the effect of sterilising the land resource for residential development. To that end, HCC's submission opposes the change in activity status and seeks to maintain the current controls that are in place under the ODP.
8. HCC acknowledges that development within the Rural Zone outside of the UEA and the AOI is not of the same degree of significance to HCC and it does not seek development controls in respect of land outside of those areas.

SPECIFIC RELIEF SOUGHT

9. Ms Alice Morris' planning evidence presented in Hearing 3 set out the specific relief sought by HCC to achieve its broad policy intent with respect to the AOI.
10. One aspect of the relief sought, was the insertion of the following provision into Objective 4.1.2 Urban growth and development¹⁰:

(a) Land use and subdivision within the Hamilton Area of Interest supports a compact urban form and avoids non-rural land uses in the rural areas.

¹⁰ Statement of Evidence of Alice Morris dated 15 October 2019, para 23(d).

11. HCC also sought that section 5.5 in the PDP be renumbered as section 5.6 and that a new section 5.5 be added as follows¹¹:

5.5 Hamilton's Area of Interest

5.5.1 Objective – Hamilton's Area of Interest

(a) Land use and subdivision in the rural zone within the Hamilton Area of interest supports a compact urban form and avoids non-rural land uses.

5.5.2 Policy – Activities within the Hamilton Area of Interest

(a) Rural land uses are supported and encouraged

(b) Non-rural land uses are avoided.

12. In relation to the UEA, HCC sought an amendment to Objective 5.5.1(a) in respect of the UEA. The relief sought is summarised in the summary of submissions as follows:¹²

535.54

Amend Objective 5.5.1(a) Hamilton's Urban Expansion Area, as follows:

(a) ~~Manage~~ Avoid subdivision, use and development within Hamilton's Urban Expansion Area to ensure that future urban development is not comprised.

AND

Any consequential amendments and/or additional relief required to address the matters raised in the submission.

13. The s 42A report on Chapter 5 supported the relief sought by HCC in respect of Objective 5.5.1(a), recommending that the objective be amended as sought in HCC submission point 535.54 to replace 'manage' with 'avoid'¹³.

¹¹ Statement of Evidence of Alice Morris dated 15 October 2019, para 23(f).

¹² HCC submission point 535.54; Statement of Evidence of Alice Morris dated 15 October 2019, para 59-61.

¹³ Section 42A report, Chapter 5: Rural Environment, p 8.

USE OF 'AVOID' IN THE AOI

14. Since Hearing 3, HCC has reflected on the relief it seeks in respect of the AOI. It considers that Objective 5.1.1 of the WPDP, as notified, provides adequate control against inappropriate land use activities within the rural environment. Objective 5.1.1 provides:

5.1.1 Objective – The rural environment

(a) Subdivision, use and development within the rural environment where:

- (i) high class soils are protected for productive rural activities;
- (ii) productive rural activities are supported, while maintaining or enhancing the rural environment;
- (iii) urban subdivision, use and development in the rural environment is avoided.

15. If the notified version of Objective 5.1.1 is adopted, HCC considers that there is no need to pursue *avoidance* of non-rural land uses in the AOI. Instead, it seeks to replace the word 'avoid' with 'discourage'. Accordingly, instead of the relief sought in Hearing 3 set out in paragraphs 10 and 11 above, it seeks the following addition to Objective 4.1.2 Urban growth and development¹⁴:

(a) Land use and subdivision within the Hamilton Area of Interest supports a compact urban form and discourages non-rural land uses in the rural areas.

16. And the following new section 5.5:

5.5 Hamilton's Area of Interest

5.5.1 Objective – Hamilton's Area of Interest

(a) Land use and subdivision in the rural zone within the Hamilton Area of interest supports a compact urban form and discourages non-rural land uses.

¹⁴ Statement of Evidence of Alice Morris dated 15 October 2019, para 23(d).

5.5.2 Policy – Activities within the Hamilton Area of Interest

(a) Rural land uses are supported and encouraged

(b) Non-rural land uses are discouraged.

17. However, the s 42A report on Hearing 3 (Chapter 5 – Appendix 5) recommends deletion of 5.1.1 and the s 42A report on Hearing 18 (Appendix 2) seeks to weaken the provision by recommending it be amended to include ‘community activities’. HCC opposes both recommendations and seeks that Objective 5.1.1 be retained as notified. It addresses its opposition to the latter s 42A recommendation in its evidence to be presented in Hearing 18¹⁵.

‘AVOID’ IN THE UEA

18. HCC maintains its position in respect of the UEA and pursues the relief it originally proposed in Hearing 3 in respect of Objective 5.5.1(a). In doing so, it has had regard to the Supreme Court’s decision in *King Salmon*¹⁶ that “avoid” bears its ordinary meaning of “not allow” or “prevent the occurrence of”¹⁷. Given the special characteristics of the UEA, including certain prohibited activities as sought by HCC, HCC considers it critically important that there be no circumstances in which non-rural land uses, including those listed in Rule 25.5(f) be permitted to establish there.

Dated 25 September 2020



L F Muldowney/S K Thomas

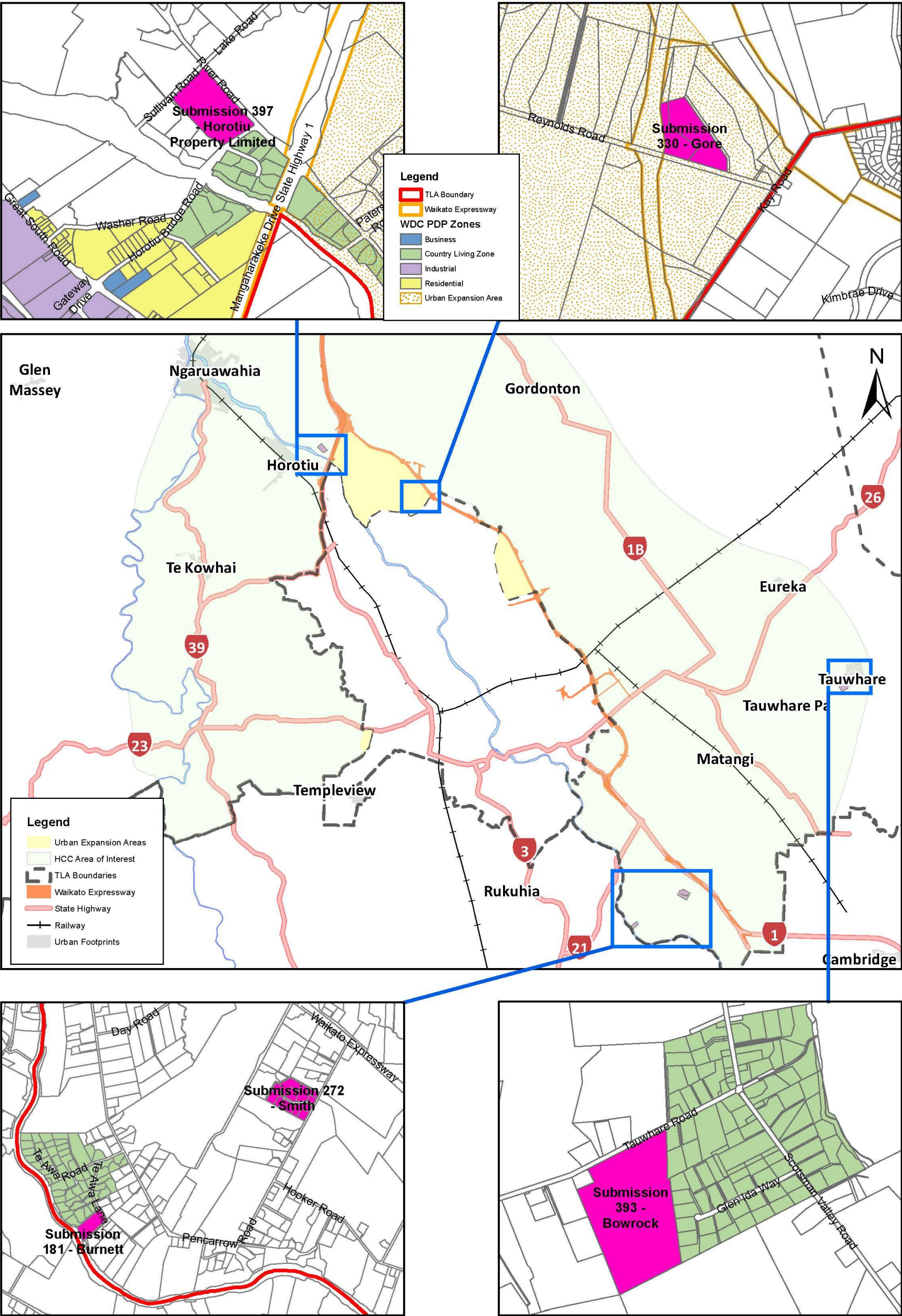
Counsel for Hamilton City Council

¹⁵ Statement of Evidence of Laura Galt dated 8 September 2020 (Hearing 18), p 11, paras 38-44.

¹⁶ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.

¹⁷ At [96].

Appendix B – Location Map of Submitters seeking rezoning to Country Living Zone



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